

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
NORTHERN DIVISION (AT KNOXVILLE)**

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|---|---|-----------------|
| NATIONAL MINING ASSOCIATION,                  | ) |                 |
|   | ) |                 |
| Plaintiff,                                    | ) |                 |
|   | ) |                 |
| v.  | ) | No. 3:00-CV-549 |
|   | ) |                 |
| DIRK KEMPTHORNE, <sup>1</sup> <i>et al.</i> , | ) |                 |
|   | ) |                 |
| Defendants.                                   | ) |                 |
|   | ) |                 |

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**STIPULATION FOR VOLUNTARY DISMISSAL WITHOUT PREJUDICE**

Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(ii), Plaintiff National Mining Association (“NMA”) and Defendants Dirk Kempthorne, *et al.*, hereby stipulate to voluntary dismissal of this action without prejudice as follows:

WHEREAS, Plaintiff NMA commenced this action by complaint filed on October 2, 2000, which alleged that Defendant Knoxville Field Office of the U.S. Office of Surface Mining Reclamation and Enforcement (“OSM”) had acted contrary to law by issuing “Field Office Policy Memorandum No. 37” (“FOPM No. 37”), which related to reclamation bonding requirements for surface coal mines when there is potential for acid mine drainage;

WHEREAS, following notice and opportunity for public comment, OSM published a final rule in the Federal Register of March 2, 2007, 72 Fed. Reg. 9616-37 (codified at 30 C.F.R. §§ 942.800, 942.816(f), 942.817(e)(3)-(4)) that addressed the issues raised in this litigation; and

WHEREAS, on February 29, 2008, OSM issued a memorandum (copy appended as

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<sup>1</sup> Pursuant to Fed. R. Civ. P. 25(d)(1), Secretary of the Interior Dirk Kempthorne is automatically substituted as Defendant in place of his predecessor, Gale Norton.

Exhibit A to this Stipulation) that rescinded FOPM No. 37 in light of the March 2, 2007 rulemaking;

WHEREFORE, Plaintiff and Defendants hereby stipulate that this action is voluntarily dismissed without prejudice, with each side to bear its own costs.

Respectfully submitted,

For Plaintiff:

By: /s/J. Michael Klise

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Dated: Oct. 3, 2008

\* \* \*

IT IS SO ORDERED this 6<sup>th</sup> day of October, 2008

  
\_\_\_\_\_  
United States District Judge